

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

In Re:

Lisa Welsh and Patrick McLane

Debtor/Plaintiff

vs.

Elaine Bostater
916 Ogontz St
Sandusky, Ohio 44870

Creditor/Defendant.

Case Number: 13-34019

Adver Pro. No.:

Judge: SUCCESSOR JUDGE

COMPLAINT

Now comes the debtor(s), **Lisa Welsh and Patrick McLane** by and through counsel and request that this Court grant injunctive relief against Defendant for violation of 11 USC § 547. This Court has jurisdiction under 11 USC §105. The debt in question was discharged under 11 USC §727(b) as debt that arose prior to the granting of relief in this case. Further this action is a core proceeding.

Defendant took funds from the debtors as a garnishment during the period immediately prior to the filing of the bankruptcy. These funds were a preferential transfer.

11 USC § 547 (f) for the purposes of this section, the debtor is presumed to be insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

11 U.S.C. 547(f)

Background and Facts

1. The Plaintiff is and has been a resident of **Sandusky**, Ohio and of the Northern District of Ohio and is subject to the jurisdiction of this Court. Defendant conducts business within the State of Ohio and was properly listed as a creditor in the bankruptcy and is subject to the jurisdiction of this Court in this Matter.

2. **Lisa Welsh and Patrick McLane** filed a bankruptcy petition in this Court on **9-27-13**.

The case filing included the Defendant, **Elaine Bostater** as an unsecured creditor on Schedule F of the bankruptcy petition (see Exhibit "A," attached hereto and made a part hereof). A 341 hearing notice was sent to the Defendant notifying them that the deadline to file a complaint objecting to the discharge was **1-13-14** (see Exhibit "B," Meeting of Creditor Notice with Certificate of Service, attached hereto and made a part hereof).

3. Defendant was listed with a total balance owed of **\$3,168.68** by the Plaintiff. Defendant received notice by being mailed through the Court's system. Defendant failed to respond or to file any objection to the discharge (see Courts Docket).

4. Defendant, Elaine Bostater, as a result of this judgment garnished Plaintiffs Patrick McLane and Lisa Welsh on **4-4-13** (see Exhibit E) **\$2, 530.59** from Plaintiff, Patrick McLane from **8-11-13 to 10-6-13** (see "Pay Stubs" Exhibit G). Plaintiffs were granted a discharge on **March 19, 2014** (see Exhibit "D," Discharge of Debtor with Certificate of Service, attached hereto and made a part hereof). Defendant was properly notified of this discharge.

5. Defendant, Elaine Bostater was requested to return all the garnishments taken 90 days preceding the bankruptcy filing. Ms. Bostater notified counsel that she would not return the garnishments taken. The **\$2, 530.59** is exempted property of the estate as it was wages for Patrick McLane. Furthermore, the above amount falls under 11 U.S.C. 547 as preferences and should be returned immediately to the Debtor(s) Lisa Welsh and Patrick McLane.

WHEREFORE, Defendant did have notice of the bankruptcy filing and automatic stay and has refused to return the garnished wages in spite of the language of 11 USC §547. Plaintiff has suffered damages, as the garnished money of \$2, 530.59 was needed to help with the recovery process from bankruptcy. Additionally, Plaintiff has the extra expenses of measures taken to retrieve these garnishments by hiring this firm to act

on their behalf. Lisa Welsh and Patrick McLane prays this Court to return the wage garnishments of \$2,530.59, also to grant punitive damages of \$1,000.00 for the additional stress and grant attorney fees as a result of Defendants reckless disregard for **11 U.S.C. 547.**

Respectfully Submitted

/s/ Donald Harris

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was sent via electronic transmission to the United States Bankruptcy Court on this 16th day of April 2014. Defendant, Elaine Bostater was served via regular U.S. mail at 916 Ogontz St. Sandusky, Ohio 44870 on this same date. Attorney Roger Stark was also sent a copy via electronic email at rstarklaw@gmail.com

/s/Donald Harris Esq.
Don@donaldharrislawfirm.com

cc: **Lisa Welsh and Patrick McLane**